

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Pharma Mar, s.a. et al.
APPLN. NO.: PCT/GB00/01857 (designating the US)
FILED: 15 May 2000
FOR: Compositions and Uses of ET743 for Treating Cancer

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, DC 20231
BOX DAC

Sir:

DECLARATION OF ATTORNEY GRAHAM K. RUFFLES

In support of the Applicant's Petition for a retroactive foreign filing license, this declaration is made by Attorney Graham K. Ruffles, partner with Marks & Clerk of 57-60 Lincoln's Inn Fields, London WC2A 3LS, United Kingdom.

1. This declaration relates to the following non-US patent applications:

GB 9911183.3, filed on 13 May 1999
GB 9911346.6 filed 14 May 1999
GB 9927005.0 filed 15 November 1999
GB 9918534.0 filed 5 August 1999
GB 9927106.6 filed 16 November 1999
GB 0007637.2 filed 29 March 2000

PCT/GB00/01857, a PCT patent application filed at the United Kingdom Patent Office on Monday, May 15, 2000, claiming priority from the six UK patent applications;

1. NON-PCT Filings based upon the six UK patent applications:

Argentina Application No. P000102321, filed 15 May 2000;
Chile Application No. 2000-1216, filed 15 May 2000; and

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Malaysia Application No. PI 20002107, filed 13 May 2000.

2. The undersigned hereby declares that the subject matter of all of the above-mentioned patent applications was not under a secrecy order at the time of filing, and is not currently under any secrecy order.
3. The undersigned hereby declares that the six above cited UK priority applications were filed without designating the names of the inventors and without regard to where any inventive activities occurred. These facts were unknown to the attorneys at the time of filing. Under UK patent law, there is no requirement to name the inventors in an application to secure a filing date. Specifically, at the time of filing of the priority documents, we were not informed by our client, Pharma Mar S.A (a Spanish company located in Madrid), that there were any US inventors involved in this case or that any inventive activities occurred in the United States.
4. At the end of the priority year in May 2000 Pharma Mar instructed us to file applications claiming priority from the six applications in Malaysia, Chile, Argentina and to file a PCT application designating all states.
5. In response to our enquiries concerning inventorship, an e-mail was sent to us by our client on 13 May 2000 (a Saturday) indicating that that two of the inventors were citizens of the United States, but no indication was given as to where these inventors conducted their work on the invention.
6. Given the late and incomplete nature of the comments received from our client, it was not believed possible to obtain pre-filing clearance from the USPTO in time to preserve the priority term. Moreover, due to the incomplete nature of the instructions received from our client, it was considered necessary to file the

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PCT application in the UK Patent Office to ensure that the priority term was not lost.

7. We submit that the retroactive license has been diligently sought after it was determined that such a license is required by US Law. We have endeavored to ascertain where the inventive contributions of the inventors occurred, and we have confirmed that the US citizen inventors made their contributions to the claimed invention in the United States.

8. The undersigned further declares that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signed



Graham K. Ruffles
Partner - Marks & Clerk

Date

